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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**CISCO'S OBJECTIONS TO ARISTA'S  
12/7/2016 TRIAL EXHIBITS AND  
DEMONSTRATIVES**

Dep't: Courtroom 3, 5<sup>th</sup> Floor  
Judge: Hon. Beth Labson Freeman

1 Cisco objects as follows to Arista's December 7 trial exhibits and demonstratives.

2 **Anshul Sadana**. Cisco objects to **demonstrative slide 8** for use with Mr. Sadana. This  
3 slide is argumentative and improper for use with a fact witness.

4 **Deepak Malik (by video)**: Cisco objects to the admittance of **Exhibit 5310** through the  
5 deposition testimony of Mr. Malik. Cisco has already provided objections to the Court for the  
6 deposition testimony that relates to this exhibit. To the extent the Court sustains Cisco's  
7 objections to the related deposition testimony, this exhibit should not be permitted to be admitted  
8 into evidence through Mr. Malik. Cisco objects to **Exhibit 5319** on the basis that it is of no or  
9 limited relevance to any matters before the jury. Fed. R. Evid. 402, 403. The deposition questions  
10 designated by Arista that relate to this exhibit do not explain what this document is or how it  
11 relates to this case. Therefore, providing this exhibit to the jury would be misleading and  
12 confusing and it should be excluded.

13 **Cate Elsten**. Cisco objects to **Exhibits 5309, 5401, 5514, 5716, 6442, 6531, 6534, 6729,**  
14 **6730, 6737, 7296, 7357, 7584, 7587, 7591, 7598** and **7604** as hearsay. These documents are  
15 internal emails, presentations, white papers and news articles. As such they are they are out of  
16 court statements offered for the truth of the matter asserted, because if not true they would provide  
17 no valid basis for Ms. Elsten's opinions. As the Court has recognized, the fact that an expert  
18 relied upon certain evidence in reaching an opinion does not render that evidence authentic or  
19 admissible. Fed. R. Evid. 703. Before Dr. Almeroth testified, Arista objected to Cisco's use of  
20 emails authored by Arista employees. ECF 690 at 2. Arista maintained that "[t]he Court should  
21 not allow [an expert] to usurp the jury's role in this trial by rehashing record evidence without  
22 offering any technical expertise." *Id.*, citing *United States v. Freeman*, 498 F.3d 893, 903–04 (9th  
23 Cir. 2007).

24 When the parties raised this issue before the Court, the Court stated that "most of them  
25 were e-mails and I'm actually not used to experts introducing documents like this." ECF 695,  
26 Trial Tr. 11/30/2016 846:18-20. Cisco heeded the Court's guidance and did not seek to introduce  
27 these statements by Arista employees through Dr. Almeroth. The same result should apply here,  
28

1 and Arista should not be permitted to use its expert as a vehicle to admit internal Cisco documents  
2 that it has otherwise failed to admit as evidence.

3 Cisco objects to **Exhibits 5309, 5401, 6229, 7296, and 7331** as not having been  
4 properly disclosed in Ms. Elsten's report. Cisco identified these exhibits to Arista as having not  
5 been disclosed and Arista has not provided Cisco with any information to suggest that these  
6 exhibits were properly disclosed in Ms. Elsten's report. Further, portions of **Exhibit 5309** have  
7 never been authenticated and should not be provided to the jury.

8 Arista provided Cisco with a number of slides to be used with Ms. Elsten. Cisco has  
9 provided Arista with its objections to these slides and Arista will be providing Cisco with a  
10 revised slide deck to in response to Cisco's objections. The parties believe that they may be able  
11 to resolve all issues that relate to Ms. Elsten's slides. Should Cisco maintain any objections after  
12 receiving Arista's revised slides, Cisco will bring these to the Court on Wednesday morning for  
13 resolution.

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16 Dated: December 6, 2016

Respectfully submitted,

17 /s/ John M. Neukom

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